



**IN THE MATTER OF A FATAL MOTOR VEHICLE COLLISION AT
NANAIMO, B.C. FOLLOWING AN ATTEMPT BY A MEMBER OF THE
RCMP TO STOP ONE OF THE INVOLVED MOTOR VEHICLES
ON JANUARY 14, 2019**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
Legal Counsel:	Martin F. Allen
IIO File Number:	2019-007
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Facts

In the early morning hours of January 14, 2019, in Nanaimo, B.C., an RCMP member attempted to stop a suspect pick-up truck driven by one of two Affected Persons in this case (AP1). The pick-up failed to stop and sped away, driving at high speed on the wrong side of the Island Highway. The officer turned off the police vehicle's emergency lights and maintained a moderate speed. She followed the pick-up, a significant and increasing distance behind it, on the correct side of the highway, and a short time later came upon a collision in which the pick-up had collided head-on with another vehicle, driven by a second Affected Person (AP2). Both drivers were found deceased at the scene.

The Independent Investigations Office (IIO) was notified by the RCMP shortly after the incident. The IIO commenced an investigation as both of the APs were deceased.

In the course of this investigation, IIO investigators gathered and analyzed evidence including:

- 1) Interviews with one Witness Officer (WO) and six Civilian Witnesses (CW);
- 2) Police reports, computer aided dispatch records and police communications transcripts;
- 3) Mobile data terminal (MDT) GPS time, position and speed data from the Subject Officer's (SO) police vehicle;
- 4) Data from the Event Data Recorder (EDR) in AP1's vehicle;
- 5) Closed circuit television (CCTV) video from several relevant locations;
- 6) Forensic scene examination and photographs;
- 7) Vehicle mechanical inspections; and
- 8) Environmental data for the relevant time period.

Pursuant to the Memorandum of Understanding between the IIO and B.C. police agencies, and consistent with the *Charter of Rights and Freedoms*, a subject officer in an IIO investigation is not required to submit to interview or provide investigators with his or her notes or reports about the incident. In this case, the Subject Officer (SO) declined to be interviewed or to provide any written notes or reports.

Analysis of the evidence reveals a sequence of relevant events as follows:

At approximately 12:40 a.m. on January 14, 2019, in a lightly populated residential area of Nanaimo, SO saw a vehicle that aroused her suspicions and followed it as it drove towards the Island Highway, about two kilometres away. At a distance of a little over a kilometre from the highway, she decided to pull the suspect vehicle over, and activated her emergency lights. The vehicle, a large GMC Sierra pick-up truck driven by AP1, increased its speed and drove away in the direction of the Highway. A few seconds later, video from commercial premises beside the road about 450 metres from the Highway shows the pick-up passing with SO's police vehicle four seconds behind, emergency lights flashing.

Very shortly afterwards, SO saw AP1's vehicle—now eleven seconds ahead of her—reach the Highway and turn southbound. She switched off her emergency lights and radioed that the pick-up was "*trying to take off*" and that she was going to "*let him go.*"

The pick-up truck had turned onto a divided highway with multiple lanes in each direction separated by a concrete barrier. He was now speeding southwards in the northbound lanes. It was dark, and there was a moderate mist, somewhat reducing visibility. SO also turned southward, but in the southbound lanes, and with her emergency lights deactivated. According to electronic data from SO vehicle's MDT, at no point did her speed on the Highway exceed the posted speed limit of 90 km/h. The pick-up driven by AP1 pulled away from her, to the point where she could "*just see his tail lights*", and she then lost sight of him as he sped up a long curve in the direction of an interchange where Highway 19 turns off towards Duke Point. She alerted Dispatch and other police units to the developing situation.

As he accelerated southward, about a kilometre from where he had entered the Highway, AP1 narrowly missed a head-on collision with a northbound civilian vehicle, the driver of which, CW1, told the IIO that he had to swerve between lanes to avoid the collision. CW1 heard the engine of the pick-up "*revving up*" as it passed. CW1's passenger, CW2, estimated that AP1 was travelling at "*over 100.*" CW1 drove on towards Nanaimo, and approximately half a kilometre later, close to the intersection between the Highway and Cedar Road, saw SO in her police vehicle, driving south in the southbound lanes at a normal speed and with no emergency lights illuminated.

A matter of seconds after his near-miss with the car driven by CW1, AP1 drove head-on into another northbound vehicle, a compact SUV driven by AP2. On the evidence, AP2 had been driving normally and in the correct lane. The collision occurred close to the northern end of the merge lane for traffic entering the Highway from the Duke Point road, approximately one kilometre south of the Cedar Road intersection.

Both vehicles were very severely damaged in the collision, and the pick-up truck burst into flames. SO, as well as other police officers and civilians, arrived and attempted to control the fire with equipment from their vehicles, but the fire was not extinguished until fire fighters arrived.

Both AP1 and AP2 were deceased at the scene.

Data from the recorder in AP1's truck showed that in the few seconds before the impact, he had been driving at full throttle and a speed of over 170 km/h.

Relevant Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through action or inaction, may have committed any offence in the course of the incident that led to the fatal collision. Consideration must be given to whether SO may have committed an offence by initiating or continuing an unjustified pursuit with the potential to endanger uninvolved members of the public.

An analysis of evidence such as GPS data, video footage and radio transmissions indicates that SO's attempt to stop AP1 by use of her emergency lights lasted only about fifteen seconds. Even during that time, she did not actively pursue him by matching his increasing speed. Seeing a police vehicle behind him—and seeing its emergency lights switched on—may well have triggered AP1's flight, but SO cannot be blamed for that if the attempted traffic stop was authorized by law.

That authorization is found in section 73 of the B.C. *Motor Vehicle Act*, which empowers peace officers, at any time, to require the driver of a motor vehicle to stop and identify him or herself. A similar statutory power is found in provincial motor vehicle legislation across Canada, and has been upheld by the Supreme Court of Canada as a reasonable limit on the right of citizens to be free from arbitrary detention.

As SO has not given an account to investigators, it is not possible for the IIO to provide the public with any detail about her specific justification, but her statutory authority to act as she did is so broad that it would not be reasonable to challenge it in this case without any evidence of improper motivation.

When AP1 failed to stop as required by law, SO was bound by B.C.'s *Emergency Vehicle Driving Regulation*, which sets out strict limits on the circumstances in which an officer may engage in or continue a pursuit. The circumstances here did not meet that regulatory threshold, so SO quite correctly chose not to pursue AP1, but instead "*let him go.*"

While AP1 drove south at speeds of up to 179 km/h, SO stayed within the speed limit and followed at a safe distance, communicating with other units. It is clear from the totality of the evidence, and in particular the observations of CW1 and CW2, that at the time of the collision she was more than a kilometre from the scene.

While there was sufficient connection between the actions of SO on the night in question and the tragic loss of life that ensued to give the IIO jurisdiction to investigate, it cannot be said that any improper or illegal act on her part was the cause of that tragedy. Indeed, given the actions of AP1 SO acted entirely appropriately to discontinue any attempt to stop the vehicle.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there is sufficient evidence that any officer may have committed an offence that would support referring this matter to Crown counsel for consideration of charges.



Martin F. Allen
Legal Counsel

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Chief Civilian Director

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